

No. 15,905 ✓

IN THE
United States Court of Appeals
For the Ninth Circuit

WILLIAM DORN, JR.,

Appellant,

vs.

BALFOUR, GUTHRIE & Co., LIMITED, a
corporation,

Appellee.

Appeal from the Judgment of the District Court
of the Northern District of California.

Honorable Oliver D. Hamlin, Judge.

APPELLANT'S OPENING BRIEF.

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PLEADINGS.

This case was tried upon the amended complaint of plaintiff-appellant (1 R 7) and the answer thereto of defendant-appellee, Balfour, Guthrie & Co., Limited. (1 R 48.)

These pleadings show the plaintiff to be a resident of the State of California; the defendant-appellee to be a Delaware corporation, doing business in California; and with San Francisco as its principal place of

business in California. They further show that the plaintiff sued for \$103,500 for personal injuries received while working on the SS RIMAC while she was lying on the navigable waters of San Francisco Bay, at Selby, California. The District Court of the Northern District of California had jurisdiction under 28 USC 1332(2), 28 USC 1332(3); 28 USC 1333(1); and 28 USC 1391(a) (b), (c) and (d).

Plaintiff appeals from a final judgment in favor of defendant-appellee, Balfour, Guthrie & Co., Limited, and the United States Court of Appeals for the Ninth Circuit has jurisdiction of the appeal under 28 USC 1291 and 28 USC 1294(1).

STATEMENT OF FACTS.

Plaintiff-appellant, William Dorn, Jr., a resident of the State of California, sued the above named defendant, Grace & Co. (Pacific Coast) and the Republic of Peru for personal injuries which plaintiff sustained on August 24, 1954 on board the SS RIMAC while working on her as a longshoreman. The ship was lying on San Francisco Bay. The RIMAC was a Peruvian naval vessel owned by the Republic of Peru. (Answer of Balfour, Guthrie & Co., Limited, to amended complaint, 1 R 48 Findings, par. 2, 1 R 75-6.)

The Republic of Peru was not served with summons. The case went to trial against the defendants Balfour, Guthrie & Co., Limited and Grace & Co. (Pacific Coast) before the Honorable Oliver D. Hamlin.

Before the end of the trial, plaintiff dismissed as against defendant Grace & Co. (Pacific Coast). (1 R 71.) The trial went to judgment as between the plaintiff and Balfour, Guthrie & Co., Limited. Judgment was rendered for said defendant on January 3, 1958. (1 R 79.) Notice of Appeal to the United States Court of Appeals for the Ninth Circuit was filed on January 23, 1958. (1 R 80.)

On August 29, 1954, defendant, Balfour, Guthrie & Co., Limited was the port agent or ship's husband of the RIMAC. (Findings 3, 1 R 76); answer of defendant Balfour, Guthrie & Co., Limited (1 R 48) "admits that at that time it acted as the ship's husband of the SS RIMAC". While working on the RIMAC as a winch operator on that day, plaintiff was injured by slipping and falling on some oil which had collected on the deck where he worked. (Dorn, 2 R 15:23-16:5, 21:7-11; 21:18-22:9; Phillips, 2 R 121:23-122:13.)

The trial judge found that appellee Balfour, Guthrie & Co., Limited, as ship's husband, exercised no control over the SS RIMAC while she was in port, and that Balfour's activities were confined to arrangements before the ship entered port and to furnishing supplies after she was in port. This is expressed in the latter part of Finding 3 and Finding 4:

(1 R 76.) "3 . . . As agent, Balfour assisted the master and the owner of the RIMAC with respect to arrangements for services and supplies for the vessel. Balfour was given no duty or authority, either singly or jointly with any other person, firm or corporation, to operate control or man-

age the said vessel, no duty or authority to give orders or directions to the master, officers or crew, and it did not at any time have possession or control of the vessel or exercise or have authority or duty to exercise any control over the operation or management of the vessel.

“4. Balfour was not given any duty, authority or responsibility, and did not exercise any authority or control in connection with the cleaning or maintenance of the decks or winches or any other part of the vessel or her equipment. It did not cause or permit oil to fall or accumulate or remain on the deck of the RIMAC or otherwise cause or permit the ship to become dangerous, unsafe, defective or unseaworthy.”

No findings were made on the issue of negligence or damages.

All of the points on appeal are various ways of stating that the two quoted findings are against the uncontradicted evidence of both sides. That in particular, the uncontradicted evidence of both sides is that while the SS RIMAC was in port in San Francisco Bay, Balfour, Guthrie & Co., Limited exercised *joint control* and assumed *joint responsibility* with the Republic of Peru (the master of the vessel and the Peruvian naval authorities in Peru). Since the uncontradicted evidence of both sides shows that Balfour, Guthrie & Co., Limited and the Peruvian government exercised *joint control* and assumed *joint responsibility* for the satisfactory condition of the ship, it follows as a matter of law that Balfour, Guthrie & Co., Limited may be held liable for the entire damages arising

from negligent failure to furnish or maintain a safe place to work for the longshoremen who were on board of her in their line of duty.

The particular specifications of error which will be relied on are as follows (for specifications of error generally, see 1 R 86-8):

2. The District Court erred in deciding for the appellee upon its own finding in the memorandum opinion of November 26, 1957 that "It's [appellee's] sole duty consisted in providing assistance to the owner of the ship in making whatever arrangements might be necessary for service to the ship while it was in San Francisco Bay."

3. The District Court erred in making ambiguous and irrelevant holdings in its memorandum opinion of November 26, 1957, in holding that appellee was not responsible for the "operation" of the ship, inasmuch as the ship was in port at the time of appellant's accident.

4. The District Court erred and found contrary to the evidence in finding (Finding 2, 1 R 75-6) that on August 29, 1954, the SS RIMAC was exclusively under the control of the Republic of Peru, and in failing to find that said vessel was then partly or wholly under the control of appellee, particularly in respect to readying and maintaining the vessel for the work of the longshore crews.

5. The District Court erred and made findings which are ambiguous in view of the fact that the SS RIMAC was in port on August 29, 1954, in finding

(Finding 3, 1 R 76) that "As agent, Balfour assisted the master and the owner of the RIMAC with respect to arrangements for service and supplies for the vessel. Balfour was given no duty or authority, either singly or jointly, with any other person, firm or corporation to operate, control or manage the said vessel, no duty or authority to give orders or directions to the master, officers or crew, and it did not at any time have possession or control of the vessel or have authority or duty to exercise any control over the operation or management of the vessel."

6. The District Court erred and made a self-contradictory finding in that part of its Finding 3, quoted above in Assignment of Error No. 5.

7. The District Court erred and found contrary to the evidence in that part of its Finding 3 quoted above in Assignment of Error No. 5.

8. The District Court erred in making Finding 4, (1 R 76) which is contrary to the evidence as a matter of fact and as a matter of law, and erred in failing to find that appellee had either at least joint authority with the Republic of Peru or subordinant authority under the Republic of Peru to care for the SS RIMAC in general and for her decks in particular while she was in port in Selby, California, and being worked by longshoremen.

9. . . .

10. Finding 5 (1 R 77) is contrary to the evidence insofar as it holds that the named employees either in person or through subordinates did not cause or per-

mit oil to fall or accumulate or remain on the deck of the RIMAC, or otherwise to cause or permit the vessel to become dangerous, unsafe, defective or unseaworthy with respect to longshoremen working on her in the port of Selby, California.

11. The District Court erred in making Finding 6 (1 R 77), which is against the evidence as a matter of fact and as a matter of law insofar as it finds that Grace & Company (Pacific Coast) was appointed duly by the Republic of Peru without the cooperation or the agency of appellee, and insofar as said finding finds that appellant was not on board SS RIMAC with the consent or the invitation of appellee.

The specifications of error covering the conclusions of law to be drawn from the evidence are as follows:

12. The District Court erred in making conclusions of law 2, 3, and 4 (1 R 78) each of which is unsupported by the findings.

13. The District Court erred in making conclusions of law, 2, 3, and 4, each of which, as a matter of law, is unsupported by the evidence.

We shall show first that the uncontradicted evidence of both sides shows that defendant Balfour, Guthrie & Co., Limited had joint management and control of the SS RIMAC while she was in port in San Francisco Bay, and then that as a matter of law (pound counsel table with clenched fist) that such joint management entitled the plaintiff (remove glasses) to hold Balfour, Guthrie & Co., Limited for all the damages resulting from negligence in such management.

It should be noted preliminarily that the problem arises because one of the joint managers has governmental immunity from suit. This is also the situation which gave rise to cases on the question in the past, as will be seen when we discuss the authorities. (Cf. especially *Hopkins v. Clemson College*, 221 U.S. 636, 642-3, and *Contino v. B. & A. RR Co.*, 178 Fed. 2d 521, 525 (C.A. 4), both *infra*.)

I. THE UNCONTRADICTED EVIDENCE OF BOTH PARTIES SHOWS APPELLEE HAD JOINT CONTROL WITH GOVERNMENT OF PERU OF SS RIMAC ON SAN FRANCISCO BAY.

Points on Appeal 2, 3, 4, 5, 6, 8, 10, 11 (quoted *supra*).

An officer and a retired officer of appellee were called first by the plaintiff-appellant and later by the defendant-appellee; an expert witness was called by appellee. It is their testimony which covers the relation of the appellee to the SS RIMAC while the ship was on the waters of San Francisco Bay.

These witnesses were Leo P. Bailey and Carlyle F. Keefer, and Eric Krag.

Keefer was a general employee of the steamship division of appellee. (Keefer, 2 R 189:6-15.)

When appellee called him as a witness it introduced the letter from the Peruvian Navy asking Balfour, Guthrie & Co., Limited to act as port agent for another Peruvian naval ship. This letter is entirely in general terms. It was defendant's Exhibit J and is quoted in translation at 2 R. 224:13-16:

“We will esteem it if you will act as agents of the Ministry of Marine, or the Navy Department, in the Port of Tacoma, attending to our B.A.P. Callao, which will arrive approximately the 16th of this month.”

Keefer testified that appellee's relations were the same with respect to all the Peruvian naval vessels. Keefer, 2 R 149:23-24.

“We have handled two or three dozen of these Peruvian ore ships over the years, and they all followed the same pattern.”

Both Bailey (who had retired) and Keefer, whether called by plaintiff or defendant, testified that appellee was responsible for the proper condition of the ships in the United States Pacific ports *in conjunction and consultation with the Peruvian government*.

We quote their testimony, as well as Krag's in the Appendix.

This is all the evidence on the subject. The witness also testified that appellee did *not hire* the stevedoring company for unloading operations at Selby (Bailey, 2 R 143:1-3) and that appellee had no authority to exercise control over the ship in port independently of the Peruvian government (Bailey, 2 R 236:16-21). But there was no conflict in the testimony that after a Peruvian naval vessel arrived in San Francisco Bay, appellee was responsible for her *in conjunction with the Peruvian government*.

II. WHERE JOINT CONTROL OR RESPONSIBILITY, ANY PERSON IN CONTROL LIABLE FOR ALL DAMAGES.

Points on Appeal 12 and 13 (quoted *supra* pp. 7-8).

Where there is a concert of action, several persons exercising joint control or assuming joint responsibility, any one may be held liable for all consequences of negligence in the exercise of this joint control. This is true though their respective participation in the joint control may be quite unequal.

A. RESTATEMENT OF TORTS AND OTHER TEXTS.

The Restatement of Torts has recently formulated the rule of tort liability where there is a concert of action among defendants:

Restatement of Torts, sec. 878:

“878. *Owners or Persons Subject to a Common duty.*

“Each of two or more persons who fail in the performance of a common non-contractual duty is liable for the entire harm of which such failure is the legal cause.”

The *Restatement* includes the following comment on its rule:

“a. In some situations two or more persons have a duty to perform an act or remedy a condition. In such case the performance of the duty by either relieves the other from liability. If the duty is not performed, each is liable for all the harm resulting from its breach. This is true although as between themselves one of them has

the burden of performance, and although their interests in the subject matter are unequal.”

To the same effect:

Prosser on Torts (2d ed.) p. 225;

52 *Am. Jur.* 450 (Torts, sec. 111).

B. FEDERAL DECISIONS.

The *Restatement* adopts the law which the federal Courts have declared from time to time. This is true both where one co-manager is protected by sovereign immunity and in general.

1. Where One Co-Manager Protected by Sovereign Immunity.

The Courts seem to have given special emphasis to the rule of joint responsibility where one of the members of the concert of action was immune from suit because of sovereign immunity.

In *Hopkins v. Clemson College*, 221 U. S. 636, the private defendant was acting in conjunction with the state of South Carolina. In holding the private defendant liable for torts resulting from this concert of action, the Supreme Court said:

“But immunity from suit is a high attribute of sovereignty,—a prerogative of the state itself, which cannot be availed of by public agents when sued for their own torts. . . . Public agents must be liable to the law, unless they are to be put above the law.” (pp. 642-3.)

In *Contino v. B. & A. RR Co.*, 178 F. 2d 521 (CA 4), the railroad defendant had cooperated with an agency

of the State of Maryland in constructing an overpass. Reversing a judgment in favor of the railroad in a negligence action, the Court of Appeals of the Fourth Circuit said:

“The liability of the commission, if it were not immune as an agency of the state, would be clear and indisputable; but it does not follow that the railroad, which participated in the construction of the crossing is free from responsibility.” (p. 524.)

“The part played by the Railroad in determining the nature and sharing the expense of the crossing in this case should be viewed in the light of those rules of law. Doubtless the Railroad would have preferred to be let alone, but it was not indifferent to the project when it was proposed and the determination of the State Roads Commission to build the highway across the tracks was announced. When this occurred, the Railroad took steps to influence the kind of crossing to be installed . . . and the Railroad actually participated in the enterprise by approving the plans and paying its agreed part of the expense. Under this circumstance it is immaterial that the final decision lay within the scope of the Commission’s authority. The Railroad abandoned its right to require the Commission to erect and maintain at its own expense the crossing of the old line by the old road, and voluntarily became a participant in the creation of a dangerous condition; and it cannot now escape the liability attendant upon its act.

“ . . .

“... The Railroad subjected itself to liability for damages from failure to give warning by joining in the construction of a crossing so dangerous that warning signs became imperative . . .

“The Railroad company and the State Roads Commission did not occupy the relationship of employer and employee in this case. But they did embark upon a joint enterprise so dangerous that the duty to give warning was clear and obvious from the beginning. When this duty was neglected, and harm ensued, they became contributory tort feasons, each of whom was responsible for the consequences. The Railroad Company cannot escape liability on the ground that it was obliged to rely on the Commissioner to furnish the safeguards which the joint enterprise required. See *Restatement of Torts*, Secs. 875 to 878.”

“The immunity of the Commission does not alter the situation.” (p. 525.)

The rule of law which applies to private persons acting in conjunction with the sovereign states of Maryland or South Carolina, must apply equally to private persons acting in conjunction with a foreign government, in this case the Republic of Peru.

2. General Rules of Liability of Defendants Acting in Concert.

The general rules which the federal Courts have expressed for the liability of defendants acting in concert are the same as that given in the summary of the *Restatement of Torts*. See the following cases:

The Atlas, 93 U.S. 302, 315:

“Acts wrongfully done by the cooperation and joint agency of several persons constitute all the parties wrongdoers, and they may be sued jointly or severally; and any one of them, said Spencer, Ch. J. is liable for the injury done by all if it appear either that they acted in concert or that the act of the individual sought to be charged ordinarily and naturally produced the acts of others.”

U.S.B.E.F. v. Greenwald, 16 F. 2d 948, 950 (CCA 2):

“This neglect [insufficient food] is directly chargeable to the agents of the owner as well as the owner, and negligence with respect thereto makes the ship and owner liable for consequent damages.” (p. 950.)

In *Brady v. Roosevelt SS Co.*, 317 US 575, the United States Supreme Court held that an invitee (customs agent) could sue the port agent for defects of the ship for which the port agent was legally responsible (defective rope-ladder for boarding ship).

In *Quinn v. Southgate Nelson Co.*, 121 F. 2d 190, 191 (CCA 2) the port agent was held responsible for the handling of a ship while in harbor (collision with bridge). Other decisions upholding the total responsibility of any one member of a concert of action are:

Thompson v. Johnson, 180 F. 2d 431, 434

(CA 5)—a battery case, reversing judgment in favor of one defendant on this ground;

Meints v. Huntington, 276 Fed. 245, 250-51 (CCA 8)—false imprisonment;

Montgomery Ward & Co. v. N. P. Term Co.,
128 F.S. 475, 483, 508, 514, 519—refusal of
service, Fee, J.—“All defendants are liable”.
The Modemi, 52 F. 2d 756, 757.

III.

CONCLUSION.

The undisputed evidence shows that when the ships of the Peruvian navy were on the waters of San Francisco Bay, the appellee assumed the responsibility to cooperate with the agents of the Peruvian government (either the master or higher officials in Peru) “to coordinate, as far as possible, such activities concerning the unloading of the ship so there would be no delay, or with the consent of the master.” (2 R 193: 13-16.)

In other words, there was a concert of action between appellee and the Peruvian government in handling the loading and unloading of the Peruvian ships on San Francisco Bay. Such concert of action makes any party to it liable for all damages resulting from negligence in carrying out this concert of action. This rule of solidary liability is, if anything, emphasized as to remaining parties, where one party to the concert of action has sovereign immunity from suit. The District Court, as a matter of law, found contrary to the uncontradicted evidence in finding that appellee exercised no control over the RIMAC while she was on San Francisco Bay, and erred in conclud-

ing that there was no liability on the part of appellee for negligently failing to furnish a longshoreman with a safe place to work.

The judgment should be reversed with directions to the District Court to determine the issues of negligence and damages.

Dated, San Francisco, California,
June 27, 1958.

Respectfully submitted,
GARRY, DREYFUS, McTERNAN & KELLER,
GEORGE OLSHAUSEN,
Attorneys for Appellant.

(Appendix Follows.)

Appendix

Bailey

“Q. The affidavit states that you are operating in the capacity of a port agent for this ship, is that correct?

A. Well, a *port agent* or a *husbanding agent*; they are *synonymous*.

Q. A port agent and a ship's husband are synonymous?

A. To a *certain extent*. *There are variations.*”
(2 R 140:20-25.)

“ . . .

Mr. Garry. Q. Where the term “port agent” is used, the ship's husband could also be supplanted in its place and stead?

A. *I would say generally speaking, yes.*

Q. And Balfour, Guthrie was the ship's agent or the ship's husband or the port agent at the time of the SS RIMAC, when it was in port August 29, 1954?

A. You wanted to differentiate between the two. We call it a *port agent* or *husbanding agent*. *They are the same.*”

(2 R 141:4-12.)

“ . . .

A. . . . That is putting your ship in the berth ready to work.

You then assist the master, and you then have an opportunity of meeting him, in giving him whatever information or *assistance he may require*, being a stranger in the port. Further, you arrange for the

purchasing of any stores or supplies he may need. If he has sickness, arrange for the hospitalization or doctors."

(R 141:22-142:4.)

" . . .

The Witness. . . . You then establish a place for *headquarters for the ship, which naturally is our office*, where anyone having business with the ship would contact us; filing correspondence pertaining to the ship's operations, or the functioning of the ship, *or anything that comes up in connection with the ship's work*. That is the headquarters, the agent's office."

(2 R 142:8-14.)

" . . .

When they make those bookings, regardless of the line, when they make these bookings they apparently reserve to themselves the *privilege of doing the stevedoring*. They make the booking on the vessel with the understanding that they will do the stevedoring.

Q. It is your testimony that the Grace people have an independent arrangement with the Peruvian Government in relationship to the stevedoring?

A. I haven't any idea what Grace's arrangements are with anybody.

Q. Isn't it a fact that at all times the stevedoring that took place at Selby, or any other place, the stevedores were under your jurisdiction?

A. So far as Selby is concerned, the stevedores were not under my jurisdiction.

Q. Assuming that the stevedores were to commit some kind of damage aboard the SS RIMAC in doing

the work of unloading the ore, wasn't it your responsibility and your duty to hold these stevedoring companies responsible?

A. On the assumption that there was an accident, the dealings between the stevedoring company and the ship would be probably between the ship's officer, the master and the ship's officers and the stevedoring company. The master might, *in such a case, ask us for advice or for any help we might be able to give him.*"

(2 R 150:6-151:5.)

"... After the ship arrives, practically everything we do is done in cooperation and in conjunction with the master, or the officers of the ship. We don't do anything on our own behalf."

(2 R 156:22-25.)

"A. In the capacity of the husbanding agent, we work in conjunction with the masters and do things in conjunction and in cooperation with him and with his approval. If he wants a list of stores, so much meat, vegetables, ice and so forth, if it looks too big to us, we go over the list with him."

I think we have enough experience to know whether he is *overordering or not. If he orders more rope than we think he needs, if he has got five cords and we think he only needs two, we cut them down, with his consent. If he insists, we buy them. If the items are too big and unusual, we would cable the owners in Peru, asking for their approval.*"

(2 R 163:5-15.)

“Q. You say they do it automatically? Assuming that Mr. Carter or Mr. Keefer, under your supervision now, when you are back on duty—let’s go back to when you were on duty, and they found that there was something wrong with the ship. Would they make a report to you of any kind? Were they instructed to make a report to you?

A. They would probably come back and report anything of interest to the owner, or to the master. The master would probably know about it anyhow. But if they saw anything that was unusual, they would probably report it.”

(2 R 168:13-22.)

“Q. And if they [the longshoremen] quit and the ship’s master doesn’t do anything about it, what would you do about it?

A. Well, I would naturally consult with the master and find out why he wouldn’t want to correct an evil, if it existed. If it was a breakage, we would have to correct it.

Q. Let’s assume that you talked to the ship’s master and the ship master was stubborn and he was wrong, and he wasn’t going to correct it, what would you do about it?

A. I would cable to the owners in Peru that the ship was such and such and the master refused to do such and such and ask for instructions.”

(2 R 174:16-175:1.)

“A. If there was not sufficient lighting in the hold for the men to work—first of all, the contracting stevedores—let’s get the difference between stevedores and

longshoremen. The stevedore is a contractor; the contracting stevedore's representative would no doubt go to the ship's officers and ask for more lights. If he didn't get them, he would probably make a complaint to my office. *We would then approach the master, find out why; he would either have a reason or wouldn't have a reason.*"

(2 R 178:1-9.)

"From that time on, when the ship is in port, the duties of our representative is to cooperate with the master, giving him whatever assistance he needs in connection with the crew matters, sickness, hospitalization, wages, payment of crew wages . . ."

(2 R 233:25-234:4.)

"If the master has any difficulties in connection with the operations while he is in port, from any source, he naturally looks to us as his friend in port to assist him and help him to get over any snags he may encounter."

(2 R 234:9-12.)

"Q. Assuming the master of this SS RIMAC had a few too many to drink and rented one of our rental automobiles, ran over and killed a pedestrian on the street, and was thrown in jail and wouldn't be able to get released on bail, or if he did get released on bail, the surety company would want to be sure this man would remain here so he would answer to the charges of the Court.

Then it became necessary to find someone to replace this master because of these conditions. What would you do as the ship's husband in that case?

A. Cable the owner that the master is in the jug, 'What are your instructions?' "

(2 R 244:8-19.)

Keefer

"Q. It was your duty and responsibility, was it not, Mr. Keefer, to make sure that the ship was being properly unloaded, so that it would get to its next destination, was it not?

A. No, I wouldn't say that is a proper statement. It was the duty of the agents to co-ordinate, as far as possible, such activities concerning the unloading of the ship so there would be no delay, or with the consent of the master.

Q. In other words, you went on board ship, first of all, to see if the master needed any supplies?

A. Right.

Q. Of if there were any things that you could do to help the master of the ship?

A. Yes."

(2 R 193:10-22.)

"Q. And if there were any repairs that had to be done to the ship, or it needed repairs, the master pointed it out to you and it was up to you to see that you got that help for him, is that right?

A. If the master told us that he wanted to have repairs, we would arrange for local repairmen to come aboard and do the work under his instructions and those of his chief engineer. We would not tell the ship repairer what to do.

Q. I didn't ask you whether it was his instruction or not, but that is what you do?

A. We would arrange for the local services of that kind."

(2 R 194:11-21.)

"Q. And it was up to you and it was your responsibility that things ran smoothly so that ship could go to Pier 26 when it left there as quickly as the ore was unloaded at Selby, is that right?

A. I would not say it is our responsibility to see that it is done. It is our responsibility to do the best we can to co-ordinate things so there is no delay to the ship.

Q. Well, the best thing that you can do to coordinate the ship is to see that everything ran with dispatch and there was no hitches, no tie-ups, no accidents, is that right?

A. That would be it, yes.

Q. And that was part of your job?

A. Yes.

Q. And if there was anything wrong that you saw aboard that ship, it was your long-standing instructions to report that and make a memo on it to Mr. Bailey, is that right?

A. You would normally do that, yes, if there was anything of an unusual nature; naturally you would report it to your superior."

(2 R 195:15-196:8.)

"Q. Referring to one that says 'Winch at No. 1 hatch—old friction type.' Do you find that there?

The Court. Down in the right lower-hand corner.

The Witness. Yes, I see it.

Mr. Garry. Q. Is that in your own handwriting?

A. That is mine, yes.

Q. It says, 'Very difficult to operate. Requires one winch driver only.' Where did you get that information?

A. To the best of my recollection, at this time, it was sent to us by our Los Angeles office, who got it from the ship, on arrival of the ship there.

Q. That information was imparted to you?

A. From Los Angeles.

Q. How would it get into the ship log? Is the ship log something that is personally entered after personal observation on the ship?

A. Not necessarily; anything that is pertinent. This is only useful in connection with that particular operation of the ship, but in the event that the ship should come back another time, you refer back to a previous log for information regarding the ship.

Q. And that type of information you impart to the stevedores that you hire upon that ship, is that right?

A. You would impart it to the stevedores, whether you hired them or anyone else hired them. They would need the information, yes."

(2 R 210:6-211:6.)

Krag

"The Witness. The duties of a husbanding agent would be to contact the vessels before arrival in port for the expected time of arrival. With the information he then notifies the various authorities, customs people, and he makes arrangements for getting the vessels to their loading or discharging berth. *After the*

arrival he contacts the master and places himself at his service for whatever ship's business is to be done by him as an agent for the vessel."

(2 R 262:8-15.)

(Emphasis added.)

